IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 137 of 1986

BHOJU MAL & ORS.
V/S
CHHIPA PALIWALA SAMAJ BALOTRA & ORS.

Mr. DILIP MOOLCHANDANI, for the appellant / petitioner

Mr. RK THANVI, for the respondent

Date of Order : 12.10.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

By this appeal the plaintiff seeks to challenge the judgments and decrees of the two learned courts below, whereby the plaintiff's suit for declaration, injunction and possession has been dismissed.

The facts of the case are, that the plaintiff filed the present suit on 15.5.78, alleging interalia, that the defendants are the office bearers of community of Chhipa Samaj Paliwala in Balotra, and looking to the innumerable members of Samaj the suit is being filed under O. 1 Rule 8 C.P.C. against office bearers in representative character. It was then alleged that in Ward No. 14 Balotra, Bheelo Ka Bas, Near Taqia of Mohammedan on Kachhari Road there was a plot belonging to Usman s/o Daood Chhipa, who went to Pakistan, and his property was declared to be

evacuee property, and this plot was identified as evacuee property no. 15 in Case No. 59/ 49- 50. The plot was surveyed by the Government on 11.11.52, and was recorded to be 75 x 45 ft. Then, on 6.2.65 this plot was auctioned, and the auction was knocked down in favour of the plaintiff on 13.8.65, the sale was confirmed on 28.10.65, and sale certificate was issued in the name of the plaintiff. Since by then some land of the plot was encroached by graveyard, the sale certificate was issued with respect to 333 sq. yards (one yard = 3ft), and possession was given accordingly. The plaintiff had given the measurements being 75 ft in north, 62 ft in south, 42 ft 6 inch in east and 45 ft in west. The site plan has been produced along with the plaint showing the land by letters “Da AA Ba Pa” and claimed to be continuing in possession. It was then alleged that in the year 1969-70 the plaintiff constructed a godown and shop on the land “Ka AA Ba Kha”, and erected the stone slabs “Ka Da”, and placed a stone slab depicting boundary at point “Da”. It was alleged that the defendant Samaj got a gift deed dt. 22.3.75, with respect to some property situated in the west of the plaintiff’s land, and the defendants have no right to interfere with the plaintiff's possession over the entire property. The plaintiff's case further is, that in 1976 the plaintiff applied for permission to construct a godown on the land “Ka Da Pa Kha” wherein, in response to public notice, the defendants objected on 5.4.77, and the Municipality vide order dt.

8.12.77 directed the plaintiff to have the matter decided from the Civil Court, and the application for permission was rejected. According to the plaintiff, the land of the defendant measures 67 ft north-south, while according to the Patta of the defendant, the land was only to the extent of 24 Haath (one Haath = 21 inch). This being only 42 ft, the defendants could not be gifted land beyond the Patta as referred in the gift deed. Thus, the land marked by letters “Ka to Da” and “Pa to Kha” belongs to the plaintiff, and could not be included in their gift deed. The plaintiff claims cause of action to have arisen on 5.4.77, when the objection was submitted by the defendant. According to the plaintiff the land is continuing to be in his possession, and therefore, injunction was prayed, seeking to restrain the defendants from interfering in the plaintiff's possession, and alternatively it was prayed, that in case the Court finds the defendant to be in possession, the decree for possession be also granted.

The defendants contested the suit by filing written statement. It was admitted that Usman's property was declared to be evacuee property, but then it was denied that the land was ever surveyed, or that the land measured 75 ft x 45 ft. Plot being auctioned was admitted. It was denied that any land was encroached by graveyard, or that therefore plaintiff got sale certificate of 333 sq. yard of land. It was denied that in Marwar, Yard comprises of 3 ft,

site plan was denied, and the plaintiff's possession was also denied.

The allegation of the plaintiff about having erected stone slabs from “Ka to Da” and placing stone slabs at point “Da” was also denied, and the plaintiff's possession over the land “Da Aa Ba Pa” was also denied. Filing of objection was however admitted, and it was contended that the defendants are in possession of the same land as it was, including the land in question. It was pleaded that the measurements of the site given in the gift deed are not correct, and that the defendants have not encroached upon any land. In additional pleas it was pleaded, that the valuation of the land is at least Rs. 12,000/-, therefore, the court has no pecuniary jurisdiction. Then, the other objection raised was, that the plaintiff had purchased the plot of Usman, who was evacuee, from the custodian, and Usman had purchased the plot in auction, and was granted Patta on 18.11.40, with respect to 25 Yard x 15 Yard land, and that admittedly in Marwar, Yard used to be comprised of 2 ft., and thus the plaintiff is not entitled to land beyond what was held by Usman. It was contended, that it appears that the plaintiff misled the custodian authorities, and measurements being 75 x 45 ft was got mentioned, in view of 25 x 15 Yard. While the plaintiffs got title over only 50 x 30 ft land. It was also pleaded, that may be, that there may be some

discrepancies in the measurements and gift deed, but then, since the plaintiff has filed the suit for declaration of his title, he has to stand on his own legs, and not on the weaknesses of the defendants. It was contended, that the plaintiff had constructed shops on the western edge only, and had not left any further land towards west thereof, rather at the time of constructing the shop, the plaintiff had encroached upon graveyard's land. Various other pleadings were taken including, that the measurements of the land, as given in the Patta did not tally with the measurements given in the site plan, annexed with the plaint. Interalia with these pleadings it was prayed that the suit be dismissed.

The learned trial court framed as many as seven issues. The crucial issue was issue no.2, being as to whether Usman's plot measured 75 x 45 ft, which was purchased by the plaintiff, but at that time it remained available only to the extent of 333 sq. yards (one yard comprised of 3 ft). Thus, the land “Da Aa Ba Pa” in the site plan belongs to the plaintiff. Likewise issue no. 3 was as to whether the land “Ka Da Pa Kha” falls within the land purchased by the plaintiff, on which the defendants have no right to interfere, and if the defendants are found to be in possession, plaintiff is entitled to possession thereof. The other issues need not detain me. Very many documentary evidence was lead before the learned trial

court, including the documents about purchase of land by evacuee Usman, the application and site plan submitted by the plaintiff in the year 1970, for raising construction of the shop, the proforma prepared by the evacuee authority, giving the description of the land, sale certificate of the property etc.

It was contended before the learned trial court that in view of the provisions of Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereafter referred to as the Act of 1954, and Section 46 of the Administration of Evacuee Property Act, 1950, hereafter referred to as the Administration Act, Civil Court has no jurisdiction to enquire into anything regarding evacuee property, and therefore, the sale certificate Ex. 3, and the estimate Ex.2, have to be taken as they are, and Court cannot go into the question, as to whether the measurements given therein are correct or not. Some judgments of this Court were cited. However, learned trial court distinguished those judgments, and proceeded to examine the matter, and found, that the bar of Section 46 and Section 36 is not attracted in the present case, and then proceeded to consider, that custodian could not transfer property, more than what came to him, as no man can pass better title than his own, and then proceeded to examine, that property of Usman was declared evacuee property, who was sold 25 x 15 Yard land (one Yard

comprised of 2 ft), and thus, at best, the evacuee authority could not sell beyond what was received by him. Then, the learned trial court proceeded to examine evidence, and noticed, that P.W.1 Bhojamal (son of the plaintiff, as plaintiff had died) had admitted, that in Marwar one yard comprised of 2 ft, but in the Central Government one yard comprised of 3 ft, and that he was given land by Central Government in yards comprised of 3 ft. He has also admitted, that he has prepared the site plan, on the basis of the yard of 2 ft. Then, the learned trial court considered Ex. A-13, A-14 and A-15, which are the documents, being application, order and Patta in favour of evacuee Usman, and found, that the land sold was 25 x 15 Yard, and any land beyond that could not be sold as evacuee property. Then, the court proceeded to examine the question, as to whether in computing the quantity of land being 375 yards, the yard should be taken to be comprising of 3 ft or 2 ft, and noticed, that in the documents there is no clue in this regard, and the matter is to be decided only on the basis of oral evidence. Then, it was considered, that in the Central Government the yard comprised of 3 ft, and on that basis estimate was prepared, while in Marwar the yard comprise of 2 ft, and P.W.1 has admitted, that he does not know as to whether the land was measured in 1952, when the estimate was prepared. Thus, it was noticed, that there was no evidence available on record about any measurements having been taken at the time of

preparation of estimate, and thus, since under Marwar Patta Ordinance, the land sold was 25 x 15 Yard (Yard 2 ft.), the measurements have been given in Ex. 2 on the basis of the Central Government treating one Yard to be of 3 ft. Then, defendant's evidence was also considered, about in Marwar Yard comprises of 2 ft, and thus it was found, that the land of evacuee Usman was 50 x 30 ft, and not 75 x 45 ft. Then, regarding sale certificate Ex. 3, it was considered, that in the sale certificate 333 yards land (one yard comprised of 3 ft.) was sold, but then the measurements of the sides are not given, nor any site plan is given, and in view of Ex. A-12 to Ex.A-15, the measurement given in Ex.-3 becomes doubtful, and it cannot be accepted, that the land, as quantified, was available on the site. Then, in this regard the learned trial court proceeded to examine the evidence on record. It was noticed that P.W.1 has deposed, that some land was encroached by graveyard persons, and remaining land to the extent of 333 sq. yards was measured, and given to them, but then he has admitted, that shops were constructed on the plot in the year 1970-71, for which he got prepared site plan, but does not know as to whether that plan is Ex. A-2, and that, he was given permission vide Ex.A-4. Then, the learned trial court proceeded to examine various other documents, and material available on record, and found, that as a matter of fact the land was open, and lying fellow, and was not in perceptible possession of any one. Then, the learned trial court

referred to the statement of P.W.4, who admitted that the measurements in the Patta are in accordance with Ex.A-2 and ultimately issue no. 2 was found against the plaintiff. Obviously issue no. 3 was also found against the plaintiff, while deciding this issue it was considered, that even in Ex.A-2, the plaintiff was not in possession of more than 32 x 20 yards of land, even as on 4.6.1970. In the result the suit was dismissed.

In appeal the provisions of Section 36 and 46 were pressed into service with full vigor, and that it is not the legal position, that the land of Usman, beyond that described in Patta could not be declared as evacuee property, as any property of an evacuee includes any property, or interest therein, which has been held by an evacuee or even any person from an evacuee, within the meaning of Section 2(f) of the Administration Act. The learned lower Appellate Court found, that in the present case it is not in controversy, that the plot belonging to Usman, who was evacuee, was evacuee property or not, rather the controversy is only to the effect, that what was the measurement of the plot of Usman, which was purchased by the plaintiff, and what was the measurement of the land, possession of which was given to the plaintiff, and then the learned court proceeded to consider, that it is not in dispute, that in Marwar, the yard comprises of 2 ft., while in the Central Government it comprises of 3 ft., and vide

Ex.A-13, the evacuee Usman had applied to purchase 375 sq. yards of land, for which Patta was granted vide order Ex. A-14, site plan whereof is Ex.A-12, and in view of the fact, that in Marwar yard comprises of 2 ft., the land given in Patta to Usman was only 50 x 30 ft. The learned lower Appellate Court found, that it appears, that the employees of Custodian Department, mentioned the measurement 75 x 45 ft. treating the yard to be comprising of 3 ft. Then, it was also noticed, that in the sale certificate detailed measurements have not been given, rather certificate for 333 sq. yards has been given, and measurements given do not even fit in. Then, it was also considered, that the sale certificate was not given with respect to 375 sq. yards, as, may be, that at the time of sale, that extent of land might not be available on the site, and since the custodian department could not sale the property beyond what was received by it, as evacuee property, it is to be seen as to what was the property of Usman, and then, it was found, that there is no evidence on record to show, that land was actually measured, while mentioning it in Ex.2, and the land was lying open. Then, the learned lower Appellate Court also considered the documents Ex.A-1, A-2 and A-3, whereby plaintiff had applied for permission to construct the shops in the year 1970, and therein the entire plot was shown to be 32 Yard x 20 Yard i.e. 64 x 40 ft, and desired to construct a shop on western corner, and no further land in the west was shown

to be lying open, belonging to the plaintiff. Thus, it was concluded, that the stand of the defendant having left his land in further west is falsified. Then, certain other circumstances were also considered, and ultimately it was concluded, that the land of the plaintiff, according to Ex.A-2 was 64 x 40 ft, and thus the impugned decree of the learned trial court was upheld.

This appeal was admitted vide order dt. 8.1.87 by framing the following two substantial questions of law:-

> "(1) Whether the civil court could go behind Ex. 2 and Ex.3 the sale certificate and after the measurements given in them?
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> (2) Whether according to the learned District Judge the question involved in the present suit is as to what was the correct measurements of the plot auctioned to the appellants when its area is given in the Sale Certificate Ex. 3 and proforma of Evacuee Property Ex.2?"

Assailing the impugned judgments and decrees, it was contended by the learned counsel for the appellant, that since Usman was declared evacuee, and proforma of evacuee property was prepared on 11.11.52, and the land was found to be of 75 x 45 ft., and this was auctioned, and sale certificate was issued for 333 sq. yards of land, being the only land available, which has been shown by the figure "Da Aa Ba Pa" in the site plan, and out of the

entire land, the plaintiff has constructed a shop and godown, and has placed stone slabs from “Ka to Da”, then applied for permission to construct godown in the year 1976, whereupon objection was raised by the defendant, and the plaintiff was directed to have the rights determined from the civil court. Then it was contended, that in the western side of the plaintiff's land, existed the land of Yaqoob s/o Usman, which was gifted to the defendants on 22.3.75, and that land was described in Patta to be measuring 24 Haath = 42 ft. while the defendants are in possession of 67 ft. of land, thus they are in possession of 25 ft. more land, while the measurements of the land from Ka to Da is 9 ft 6 inch, and from Pa to Kha 13 ft 6 inch. Thus, the defendants are in illegal possession of the plaintiffs' land. Then, again relying upon Sections 36 and 46, and on the judgment of this Court, in Poonam Chand Vs. Ram Lal, reported in 1983 WLN (UC)-454, Kishansingh Vs. State of Rajasthan, reported in 1984 WLN (UC)-29, Firm Jethmal Vs. Ram Nath, reported in 1984 WLN-626, and on the judgment of Hon'ble the Supreme Court, in Custodian Evacuee Property Punjab Vs. Jafran Begum, reported in AIR 1968 S.C.-169, it was contended, that the learned courts below have no jurisdiction to enter into the controversy about the correctness of the land conveyed by sale certificate Ex.3, or description as given in Ex.-2. It was then submitted, that the sale certificate has been issued for 333 sq. yards of land, and the plaintiff is claiming relief

with respect to the land “”Ka Da Pa Kha” and by including this, the entire land “Ka Da Ba Pa” comes to 333 sq. yards only, while the defendants are already in possession of more than the land covered by Patta, which is gifted to them.

On the other hand learned counsel for the respondent supported the impugned judgments, and relied upon the documents Ex.A-1, A-2, A-4, A-5 and A-6, and submitted that from Ex.A-13, 14 and 15 it is clear, that the land of Usman measured only 25 x 15 Yard (Yard= 2ft), and in view of the provisions of Section 274 of the Municipalities Act, the plaintiff is bound by Ex.A-1 and A-2, wherein the plaintiff has himself shown his land to be 32 x 40 Yard (64 x 40 ft), and that being the position the plaintiff has no case to get any decree. It was then submitted, that in Ex.-3 the detailed measurements have not been given, as to how 333 sq. yards of land is available on the site, and admittedly no site plan is annexed with it. Obviously, no document like memo of delivery of possession etc. is there, rather there is absolutely no evidence on the side of the plaintiff to show, as to which precise 333 sq. yards of land was given to the plaintiff, and until and unless the plaintiff proves the precise portion of land encroached by the defendant, and that portion to be belonging to the plaintiff, the plaintiff is not entitled to any decree. It is established, that the plaintiff has to

stand on his own legs, and cannot use the crutches of the weaknesses of the defendant. According to the learned counsel, from a reading of the plaint, it is clear, that the plaintiff is not clear within himself, even as to whether the defendant has encroached upon his land, or not, and has come with a pleading of being in possession, and prayed for injunction, and has also alternatively prayed for relief of possession. Then, opposing the submissions made on the anvil of Section 46 and 36, and the various case law it was submitted, that the principles propounded in the cases is not in dispute, but then a look at these sections does show, that they have a different field of their applicability, and have a limited field of exclusion of jurisdiction of civil court. In the present case the controversy gone into, or raised by the defendant, does not in any manner violate the provisions of Section 36 or 46, and the enquiry required to be made, and actually made, by the learned courts below is not at all barred by any of the two provisions, and thus the legal bar against entertaining the suit is not attracted, and then the findings recorded by the two learned courts below, concurrently, are pure findings of fact, arrived at after appreciation of evidence, oral as well as documentary, which cannot be interfered with in second appellate jurisdiction of this Court, in absence of any pleading about findings being out come of non reading, or misreading of any document, or non reading of material on record, or misreading thereof, and

therefore, the findings do not require any interference in this second appeal.

I have considered the submissions, and have gone through the record, so also the judgments cited by the learned counsel for the appellant.

Before proceeding further to consider the submissions, I may gainfully quote the provisions of Section 46 and Section 2(f) of the Administration Act, and Section 36 of the Act of 1954 relied upon, and pressed into service by the learned counsel for the appellant, which read as under:-

> "36. Bar of jurisdiction.- Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

> "46. Jurisdiction of civil Courts barred in certain matters:- Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction-
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> (a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or
>
> (b) ..
>
> (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) to respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine."

"2.(f) "evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August 1947, by any mode of transfer which is not effective by reason of the provisions contained in Section 40, but does not include-

(i) any ornament and any wearing apparel, cooking vessles or other household effects in the immediate possession of an evacuee;

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August 1947, in any place now forming part of Pakistan and continues to be so situated after the said date;"

At the outset it may be observed that various factual aspects, involved in the matter are not in dispute between the parties; being, Usman having become evacuee, his property having been declared evacuee property no. 15, Usman's property having been put to auction, that having been purchased by the plaintiff vide Ex.-3, Yard prevalent in Marwar comprised of 2 ft, while that in the Central Government comprised of 3 ft, and that the defendants have been gifted land on 22.3.75.

With these admitted facts the controversy involved in the appeal is required to be gone into. The case of the plaintiff is, as noticed above, that the

evacuee property was surveyed on 11.11.57, and was found to be measuring 75 x 45 ft, and was so mentioned in Ex. 2, it was auctioned, and sale certificate Ex. 3 was issued in respect of 333 sq. Yards of property, i.e. less than the evacuee property. While the defendants contended, that it was the property of Usman, which had become evacuee property, and since as is clear from Ex. 11, 12, 13 and 14, that Usman was granted Patta with respect to 25 x 15 Yards, which according to Marwari Yard measures 50 x 30 ft, and therefore, the evacuee authority could not confer title on the plaintiff, of the property, beyond what was purportedly belonging to the evacuee. The other submission made is, that as a matter of fact the property was never measured by the evacuee authority on 11.11.57, and the measurement given in Ex. 2 were mentioned taking 25 x 15 sq. yards to be equivalent to 75 x 45 ft. Likewise even in sale certificate, the total area of the land has been given in square yards, and measurements of any of the sides is not given, nor any site plan has been given, whereby the exact location of the property sold could be ascertained, and therefore, simply because the plaintiff has described the land in the site plan Ex.-4, he cannot be said to be entitled to get the decree.

In my view, even after going through the record, it is clear, that there is absolutely no evidence on the side of the plaintiff, to show, that any measurement was

actually ever taken, for the purpose of mentioning in Ex. 2. Likewise, I also find, that measurement of any of the sides of the land has not been given in Ex. 3, nor any site plan has been annexed, nor there is any document, like memo of delivery of possession.

Thus, the controversy is, as to whether the land of Usman evacuee, being 25 x 15 Jodhpuri (Marwari) Yard, the plaintiff does not get any title over the land beyond that, or since in Ex.-2 the measurements are mentioned, and in Ex. 3, **about** 333 sq. yards land property has been sold, the plaintiff is entitled to decree. It is for this purpose, that reliance is placed on Section 36 of the Act of 1954 , and Section 46 and Section 2(f) of the Administration Act, as mentioned above.

Now I take up the judgments cited by the learned counsel. Jafran Begum's case involved the controversy, in the manner, that the house belonged to Murad Bux, who died in 1922, and in 1947 it was in the possession of his son and widow, and after partition, the son migrated to Pakistan, thereafter notices were issued to grand son Dildar, to show cause, as to why the house be not declared as evacuee property, and no notice was given to Jafran Begum, and vide order dt. 7.6.1952 the house was declared to be evacuee property. Then, Jafran Begum laid a claim, claiming the house under a Will by Muradbux executed in

1918, and the Custodian held, that Mohammedan cannot Will more than one third of his property, and therefore, the Will could not be acted upon. Then, the matter was carried from place to place i.e. from authorities to authorities. In the meantime, the suit was filed by Jafran Begum on 3.3.1958, and in that context, the controversy was, as to whether the claim could be entertained on the face of Section 46 of the Administration Act. In my view, the controversy raised therein was obviously covered by Section 46, as under Section 7 the Custodian has to decide, as to certain property is, or is not, evacuee property, and his jurisdiction is not dependent upon any collateral fact being decided as a condition precedent to his assuming jurisdiction, and it was so held by Hon'ble the Supreme Court.

Then, in Firm Jethmal's case, a shop was got attached and sold in execution of the decree, and was purchased by the plaintiff, and the possession was delivered to the plaintiff on 22.10.59. Then, on 20.12.1961 the Assistant Custodian cum Managing Officer, taking the shop to be forming part of the property of the compensation pool, under the Act of 1954, sold it by auction, and was purchased by P.W.4. The plaintiff raised objection against the said auction, and was over-ruled on the ground, that the judgment debtor had no saleable interest in the property, as the shop was an evacuee property, it was not

available for attachment and sale in execution of the decree. The plaintiff claimed the relief for recovery of principal amount, paid for purchase of the property, and interest. In this suit the defendant maintained to be having saleable interest in the property, and the plaintiff was contended to be not entitled for refund of the sale price. The trial court decreed the suit. The Appellate Court, in appeal, dismissed it, and in the plaintiff's appeal it was considered, that in view of the Act of 1954 the title in the property passes to the purchaser on confirmation of sale, and thus finding the judgment debtor to be having no saleable interest, the plaintiff's suit was decreed. In my view this judgment hardly has any bearing on the controversy involved in the present case.

Then in Poonam Chand's case it was held, that when registered sale deed is executed by the competent authority and the property appears to be evacuee property, it could be assumed, that it was also a composite property, and the competent officer was entitled to sell it, and the question, as to whether the property in dispute was evacuee property, or composite property, cannot be decided in this suit. In my view on the legal principles propounded, there is no dispute.

Then, in Kishan Singh's case it was held, that the question, as to whether the property was evacuee

property, or the State property, cannot be gone into by the civil court, in view of the bar enacted under Section 46. The legal principle propounded in this case is also not in dispute.

In my view, it is clear, that in the present case there is no controversy, as to whether the property is evacuee property or not, nor the legality of any action taken by the custodian is under question. Likewise there is no provision in the Act of 1954, whereunder the Central Government, or any officer, or authority appointed under that Act, may be empowered, by or under that Act, to determine the question, and obviously no injunction can be granted by any Court, or other authority, in respect of any action being taken in pursuance of the power conferred by that Act, nor any such injunction has been claimed in the present suit. So far taking of the action by the authority is concerned, that is already over after issuance of sale certificate Ex.3, and it is not in dispute, that Usman was evacuee, and his property has been sold to the plaintiff. In my view, thus, the bar of the provisions of Section 46, or Section 36 for that matter, is not at all attracted.

The question then is about the plaintiff's right to maintain the suit for injunction, declaration and/or possession. It is settled law, that the plaintiff has to stand on his own legs, and thus the plaintiff has to plead

and prove to be the owner of the land, or to be the person entitled to injunct others from doing the act complained of, with respect to the property pleaded by the plaintiff. In the present case, since the plaintiff has come with a case of having title in the land, the plaintiff has to prove to be having title in the land, on which the defendant contemplates to trespass, or has illegally trespassed. For proving that title, the plaintiff has relied upon Ex. -2 and 3. So far Ex. 2 is concerned, it is not of any assistance, for the simple reason, that this describes the land to be 75 x 45 ft., while the land to that extent has not been sold to the plaintiff under Ex. 3, as therein only 333 sq. yard of the land has been sold. This, coupled with the fact, that as noticed above, there is absolutely no evidence on record to show, that at the time of, or for, preparing Ex.-2, land was measured by any of the authorities on the site. Then, land to that extent has not admittedly been sold to the plaintiff. Then, coming to Ex. 3, may be that thereby the plaintiff became a title holder of the land measuring 333 Yard, boundaries of four sides have though been mentioned therein, but then, firstly there is nothing to show, that lesser land was given to the plaintiff because the land was occupied or encroached by the graveyard. Likewise, there is no site plan of the land available on record, much less attached to Ex. 3, from which the precise identity of the land could be ascertained. Then, the measurement of any of the sides of

the land, much less all the sides, has not been given in the sale certificate Ex.3.

In that view of the matter, it cannot be said, that the land as claimed by the plaintiff, to be belonging to him, as purportedly detailed in site plan Ex.4, belongs to the plaintiff. It is a different story, that from Ex. A-11 to A-14 it is clear that Usman was sold the land measuring 50 x 30 ft. while the plaintiff claims possession over 68 ½ x 43 ft., inasmuch as in the north he claims 75ft, while in south he claims 62, then in east he claims 42'.6”, and in west he claims 45 ft. This is one aspect of the matter. The other equally more important aspect of the matter is, the consistent conduct of the plaintiff, inasmuch admittedly the plaintiff constructed the shop (shop and godown) on the north western corner, in the year 1970, and did get prepared site plan. Then, the defendant has produced site plan, being Ex. A-2, which was submitted for permission vide Ex.A-1. These documents purported to be signed by the plaintiff, and are the certified copies of the municipal records, which by virtue of Section 274 of the Municipalities Act, is sufficient proof of its correctness. Secondly in this site plan Ex.A-2, it is not shown, that beyond the shop, there is any more land of the plaintiff, left open or enclosed by him, rather the plaintiff has described his title over the land to be 60 x 40 ft. in Ex.A-2.

Both the learned courts below have considered the entire evidence on record, and have appreciated the evidence, and the documents available on record, having produced by both the parties, and has found, that it is not established, that the land claimed "Ka Da Pa Kha" falls within the land purchased by the plaintiff. Even after going through the entire evidence on record, oral as well as documentary, I have not been able to come to any conclusion of fact, different than ones, as arrived at by the learned courts below. I may observe, that even erring against myself, and forgetting all bounds of Section 100 C.P.C., I have gone through the entire material on record, and even thereafter, I am at one with the finding of the learned courts below.

The result of the above discussion is, that two questions framed, are answered in the manner, that there is no question of going behind the measurements, given in Ex. 2 and 3, and they are not required to be gone behind. So far as question no. 2 is concerned. The area has been given in Ex. -2 and 3. Admittedly the land as described in Ex.-2 has not been sold, and in Ex. -3 no description of land has been given, to identify the precise land sold, and delivered possession to the plaintiff, as claimed by the plaintiff in the plaint, as no measurements of even any of the sides of land, as pleaded, has been given. The

questions are accordingly answered.

The appeal thus has no force, and is dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/